

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

THOMAS EMIL SLIWINSKI,

Plaintiff,

vs.

MICHAEL FLETCHER, BETTE SPOON,
DAWN PHILLPOT, THOMAS WILSON,
RUSS DANAHUR, KARA IVIE, PATRICK
SHIHAR, SGT. POMERY, UNKNOWN
NAMES C.O.'s LHU1-2, MEDICAL
DEPT., KAREN PETERSON, CHRISTINA
SLAUGHTER, and MYRNA BEESON,

Defendants.

CV 18-00018-H-BMM-JTJ

FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Plaintiff Thomas Sliwinski, a state prisoner proceeding without counsel, has filed a Motion to Dismiss Without Prejudice. (Doc. 8.) Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure allows a plaintiff to voluntarily dismiss an action by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. The Ninth Circuit has explained:

Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing *Hamilton v. Shearson-Lehman American Express*, 813 F.2d 1532, 1534 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of dismissal prior to the defendant's service of an answer or motion for summary

judgment. The dismissal is effective on filing and no court order is required. *Id.* The plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a Rule 41(a)(1) notice. *Id.*; *Pedrina v. Chun*, 987 F.2d 608, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court automatically terminates the action as to the defendants who are the subjects of the notice. *Concha*, 62 F.2d at 1506. Unless otherwise stated, the dismissal is ordinarily without prejudice to the plaintiff's right to commence another action for the same cause against the same defendants. *Id.* (citing *McKenzie v. Davenport-Harris Funeral Home*, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal leaves the parties as though no action had been brought. *Id.*

Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). Defendants have not yet been served in this matter therefore no answers to Mr. Sliwinski's pleading, nor motions for summary judgment have been filed in this case.

Because Mr. Sliwinski has exercised his right to voluntarily dismiss the complaint under Rule 41(a)(1), this case should be dismissed. *See Wilson*, 111 F.3d at 692.

The dismissal is without prejudice. Fed. R. Civ. P. 41(a)(1)(B).

Accordingly, the Court issues the following:

RECOMMENDATIONS

Mr. Sliwinski's Motion to Dismiss (Doc. 8) should be GRANTED and this matter should be DISMISSED WITHOUT PREJUDICE.

DATED this 22nd day of May, 2018.

/s/ John Johnston
John Johnston
United States Magistrate Judge